*THE HON'BLE **DR JUSTICE G.YETHIRAJULU**

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+ WRIT PETITION NO: 20378 of 2004

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%Dated 19.11.2004

Sree Lakshmi Metal Industries & constructions, Special Class contractors specialist in Asphalat Roads by Hot Mix Process, 12-13-23, Street No.5 Tarnaka, Secunderabad, rep by Managing Partner, B. Venkat reddy
S/o Ganga Reddy R/o Hyderabad.

..... PETITIONER

$1 The Commissionerate of Tenders BRKR Bhavan, Hyderabad
2 Chief Engineer (R&B) Erramanzil Hyderabad
3 Superintending Engineer (R&B) Head Quarters Circle, Erramanzil, Hyderabad
4 M/s. Ramkey Company Limited rep by Mr. Ram Mohan Reddy, Somajiguda Hyderabad

.....RESPONDENTS

! Counsel for the Petitioner: MR.K.RAGHUVEER REDDY, Advocate

Counsel for the Respondents 1 to 3: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No.4:Mr.VEDULA VENKATA RAMANA,

< GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1996 S.C. 11

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 20378 of 2004

Between:

Sree Lakshmi Metal Industries & constructions, Special Class contractors specialist in Asphalat Roads by Hot Mix Process, 12-13-23, Street No.5 Tarnaka, Secunderabad, rep by Managing Partner, B. Venkat reddy
S/o Ganga Reddy R/o Hyderabad.

..... PETITIONER

AND

1 The Commissionerate of Tenders BRKR Bhavan, Hyderabad
2 Chief Engineer (R&B) Erramanzil Hyderabad
3 Superintending Engineer (R&B) Head Quarters Circle, Erramanzil, Hyderabad
4 M/s. Ramkey Company Limited rep by Mr. Ram Mohan Reddy, Somajiguda Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandmaus, or any other appropriate Writ, order or direction, declaring the action of the 3rd respondent in not opening the price bid of the petitioner pursuant to tender notice dt.7-10-04 in tender notice NO. TA7/AEE9/14828/04/Traffic on the file of the 3rd respondent as being illegal, arbitrary and consequently direct the 3rd respondent to open price bid of the petitioner and submit the same to the 1st respondent and further directing the 1strespondnet to consider the price bid of the petitioner and also 4th respondent for grant of work mentioned in the tender notice dt.7-10-2004.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY, Advocate

Counsel for the Respondents 1 to 3: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No.4:Mr.VEDULA VENKATA RAMANA, Advocate

The Court at the admission stage made the following:

HONOURABLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.20378 OF 2004

ORDER:

The petitioner is a firm undertaking contract works. The third respondent issued a tender notice on 07.09.2004 calling for tenders regarding the execution of the work of development of new internal roads, footpaths, parking, landscaping, and providing MS grill etc., in the premises of A.P. Secretariat, Hyderabad, at an estimated cost of Rs.2,31,50,395/- and those who are eligible to participate were required to participate in the tender. The petitioner submitted its tender in the office of the third respondent. The technical bids were opened on 25.10.2004, though it was scheduled to be opened on 01.10.2004 as per the tender notice. The petitioner and the 4th respondent participated in the tender. The petitioner produced all the required documents as per the tender notice including a certificate issued to its concern regarding the experience in electrical works. The third respondent addressed the Central Public Works Department seeking information regarding the genuineness of the experience certificate of the petitioner's concern. The Managing Partner of the petitioner firm was asked to get a certificate from CPWD. He took the letter to the third respondent on 26.10.2004 and necessary clarification was issued by the CPWD on the same day confirming the genuineness of the experience certificate along with the clarification regarding the cost of the work executed by the petitioner's concern during the year 2000-01 and it was immediately submitted in the office of the third respondent. The petitioner was waiting for a call for opening of price bid. It quoted lesser price than the 4th respondent. The third respondent without waiting for the reply from CPWD opened the bid on 26.10.2004 to favour the 4th respondent, though the petitioner satisfied all the requirements and is a fully qualified tender. The petitioner contends the opening of the tender of the 4th respondent by the third respondent and sending the same to the first respondent for approval without opening the bid of the petitioner and sending the same to the first respondent along with the bid of the 4th respondent. The petitioner further contends that if the bid of the 4th respondent is accepted

without considering the bid of the petitioner, the state will be put to loss to a tune of Rs.5 lakhs. The petitioner therefore, approached this Court through this writ petition seeking to declare that the action of the third respondent in not opening the price bid of the petitioner pursuant to the tender notice dated 07.10.2004, as illegal and arbitrary and to direct the third respondent to open the price bid of the petitioner and submit the same to the first respondent for the purpose of consideration and approval along with the price bid of the 4th respondent.

2. The third respondent filed a counter-affidavit resisting the writ petition with the following contentions in brief:

The second respondent invited the tenders and the third respondent is only a tender receiving authority. The petitioner submitted a tender on e-Procurement on 19.10.2004. As per the tender notice, the technical bid was proposed to be opened on 18.10.2004 at 12 Noon and the same was opened as per schedule without any postponement. On opening the technical bid, it was noticed that 4 tenderers including the petitioner and the 4th respondent participated. As per the condition of the tender notice, the Contractor or his identified the Sub-Contractor should possess the required valid electrical licence and registration for executing the electrification work and should have executed similar electrical works worth Rs.6.75 lakhs in any one financial year from 1999-2000 to 2003-2004. The petitioner submitted experience certificate of M/s Universal Engineering Company regarding electrical works of value of Rs.20,09,005/- and Rs.22,97,620/- covering the financial years from 07.07.1997 to 10.09.1999 and 07.02.2000 to 04.01.2001 respectively. The certificate did not specify the amount of work executed in one financial year in particular to satisfy the tender condition. The petitioner was asked to furnish the year wise break up particulars of the work executed duly obtaining from the concerned authorities on the strength of the letter issued to the Superintending Engineer (Electrical), C.P.W.D, Hyderabad, on 25.10.2004. The said letter was collected by the petitioner on the same day. At the time of handing over the letter, it was made clear to the representative of the petitioner that the reply should reach the office of the third respondent before 3 PM on 26.10.2004. The opening of the price bid was postponed from 23.10.2004 at 3 PM to 26.10.2004 at 3 PM to facilitate the

petitioner to furnish the clarification on the break up of the year wise financial statement. But the petitioner failed to furnish the clarification within time. The clarification obtained by the petitioner was received in the office of the third respondent at 06:40 PM on 26.10.2004. Therefore, the third respondent has no option except to open the price bid basing on the technical bid evaluation. Since the petitioner failed to submit necessary clarification as required by the third respondent before 3 PM on 26.10.2004, he is disqualified in technical bid evaluation itself. Subsequently, the price bid of the qualified tenderer i.e., the 4th respondent is opened as per the tender conditions. Since the petitioner was disqualified during the technical bid evaluation itself, the opening of the price bid does not arise. The clarification called for from the tenderer shall be furnished within the stipulated time, which shall not be more than a week. Since the petitioner failed to bring the clarification, the disqualification of the petitioner is fully justified. If the work is kept pending for a long time, it would cause inconvenience to the movement of VVIPs and other dignitaries. Therefore, the writ petition is liable to be dismissed.

3 . In the light of the contentions raised by both parties, the point for consideration is whether the action of the third respondent in not waiting for the clarification and not opening the bid of the petitioner is arbitrary and illegal and whether the petitioner is entitled to be considered in accepting the bid?

4. The learned counsel for the petitioner submitted that the petitioner submitted his tender within time. The tender was scheduled to be opened on 23.10.2004 at 3 PM. It was postponed to 26.10.2004 at 3 PM. According to the third respondent the postponement was made only to facilitate the petitioner to furnish the clarification on the break up of the year wise financial statement. It is an undisputed fact that the letter addressed to CPWD was handed over to the petitioner on 25.10.2004 i.e., two days after the postponement of the opening of the price bid. In the letter dated 'nil' of October, 2004 addressed to CPWD, the third respondent requested the Superintending Engineer (Electrical), CPWD to confirm the genuineness and to send the clarification at an early date. No date has been mentioned in the said letter for the receipt of

the reply. The Superintending Engineer, CPWD, gave the reply on 26.10.2004. The third respondent contends that it was brought by the petitioner at 6.40 PM. The third respondent, having entertained a doubt about the genuineness of the certificate produced by the petitioner and having addressed a letter to CPWD, is normally expected to wait for the reply to take further action in the matter. Having addressed a letter seeking clarification regarding the genuineness of the certificate produced by the petitioner, the third respondent ought to have waited for the reply, if necessary by postponing the date of the opening of the price bid. The third respondent, while saying that the opening of the price bid was postponed from 23.10.2004 to 26.10.2004 only to facilitate the petitioner to furnish the clarification, is not supposed to proceed to open the price bid of the 4th respondent on 26.10.2004 at 3 PM knowing fully well that if the reply is in favour of the petitioner, he has to be considered along with the 4th respondent for opening of the price bid. The non-mentioning of the date in the letter addressed to SE, CPWD, the delivery of the letter two days after the postponement of the opening of the price bid on 25.10.2004, without giving sufficient time for getting the reply from the concerned authority, opening of the price bid without waiting for the reply, is an indication of arbitrariness on the part of the third respondent and it is leading to an inference that the third respondent in order to help the 4th respondent invented a pretext of seeking clarification from SE, CPWD and rejected the technical bid of the petitioner to forward only the tender of the 4th respondent to the 2nd respondent for approval.

5. The learned counsel for the third respondent submitted that this Court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot interfere with the decision of a body of the Government regarding the acceptance or refusal of the tenders he relied on a judgment of the Supreme Court in support of the same in **Tata Cellular v. Union of India**, wherein the Supreme Court dealt with the aspects relating to administrative action and judicial review and held that in the matters relating to acceptance or refusal of tenders by the bodies of the Government, the Court has to confine itself to the

question of legality and its concern should be 1) whether a decision-making authority exceeded its powers; 2) committed an error of law; 3) committed a breach of the rules of natural justice; 4) reached a decision which no reasonable Tribunal would have reached; or 5) abused its powers. The Supreme Court further observed that it is not for the Court to determine whether particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. An administrative action is subject to control by judicial review on the ground of illegality, irrationality, procedural impropriety and such other grounds.

6. The learned counsel for the petitioner submitted that the case on hand falls within the purview of the parameters fixed by the Supreme Court and as the third respondent abused its power and committed breach of the principles of natural justice by not waiting for the clarification, therefore, it is a clear case of bias attributable to the third respondent with a view to favour the 4th respondent.

7. Had the third respondent rejected the technical bid of the petitioner on the ground that he did not submit the year wise figures regarding the electrical work executed by its sister concern in any one of the financial years out of five years, the position would have been different. When the third respondent having taken a decision to get clarification from SE, CPWD, he is not supposed to change the mind and resort to open the bid of the 4th respondent by rejecting the technical bid of the petitioner. Had the third respondent taken a decision regarding the acceptance of the technical bid after the receipt of the clarification, the petitioner would have worked out his remedy somewhere else. There is no scope for the third respondent to argue that the date of opening of the price bid cannot be postponed, since it was already postponed once.

8. The above circumstances amply establish that there was no fairness or reasonableness in the action of the third respondent while dealing with the technical bid and price bid and that there is arbitrariness on the part of the third respondent in not opening the price bid of the petitioner after receipt of the

clarification and there is bias shown by the third respondent in favour of the 4th respondent. Therefore, there is every justification for this Court to issue a direction to the third respondent to examine the clarification given by the Superintending Engineer (Electrical), CPWD, and if it is as per the required condition to open the price bid of the petitioner and to forward the same to the second respondent for taking a decision regarding the acceptance of the tender from among the bidders.

9. The writ petition is accordingly allowed. The third respondent is directed to examine the letter received from the SE (E), CPWD dated 26.10.2004 and if the clarification satisfies the condition of the tender notice, he shall accept the technical bid and on acceptance of the technical bid, shall open the price bid of the petitioner in the presence of its representative and forward the same to the second respondent for the purpose of consideration along with the price bid of the 4th respondent. On receipt of the price bid of the petitioner also, the second respondent shall examine the price bid of the petitioner along with the price bid of the 4th respondent and take appropriate decision as per the terms of the tender notice and the relevant rules in force. No order as to costs.

Dr. G.YETHIRAJULU, J

19th November, 2004.

SKM

TO

1 One Fair Copy to the Hon'ble Dr.Justice Dr.G.Yethirajulu (For his Lordships kind perusal)

2 The Commissionerate of Tenders BRKR Bhavan, Hyderabad
3 Chief Engineer (R&B) Erramanzil Hyderabad
4 Superintending Engineer (R&B) Head Quarters Circle,

Erramanzil, Hyderabad
5 Two C.Cs. to G.P. for Roads and Buildings,

High Court Buildings, High Court of A.P., Hyderabad, (OUT)

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9 8 L.R.Copies.